

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF:

**Kendall L. Miller and Beatrice A.
Miller, dba West Kimberly Mobile
Home Park**

**Scott County
Wastewater Facility No. 6-82-00-6-04**

**ADMINISTRATIVE ORDER
NO. 2010-WW-11**

**TO: Kendall L. Miller and Beatrice A.
Miller, Owners
West Kimberly Mobile Home Park
22500 Great River Road, P.O. Box 476
LeClaire, IA 52753**

I. SUMMARY

This administrative order (order) is issued to Kendall L. Miller and Beatrice A. Miller dba West Kimberly Mobile Home Park. The Iowa Department of Natural Resources (Department) issues this order due to violations of NPDES permit effluent limit violations, failure to timely submit wastewater monthly operation reports (MORs), failure to measure and report all required parameters on the MORs, failure to properly maintain the wastewater treatment facility (WWTF) serving the West Kimberly Mobile Home Park, and failure to submit an engineering evaluation of the WWTF. The order requires submittal of a preliminary engineering report for the WWTF at the West Kimberly Mobile Home Park and implementation of the recommendations made by the preliminary engineering report. The order requires the timely submittal of MORs with all required information to Department Field Office No. 6 (FO 6) and assesses a penalty of \$4,000.00.

Any questions or response regarding this order should be directed to:

Relating to technical requirements:

Josh Sobaski, Environmental Specialist
Russell Royce, Environmental Specialist
IDNR Field Office No. 6
1023 W. Madison
Washington, Iowa 52353-1623
Ph: 319/653-2135

Relating to legal requirements:

Diana Hansen, Attorney at Law

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-6267

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

Kendall L. Miller and Beatrice A. Miller, dba West Kimberly Mobile Home Park

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. West Kimberly Mobile Home Park, also known as West Kimberly Park & Motel (West Kimberly), is located at 4847 W. Kimberly Road, Davenport, Iowa 52806. The legal description for this facility is Section 8, T 78N, R 03E, Scott County, Iowa. Kendall L. Miller (also known as Ken Miller) and Beatrice A. Miller, 22500 River Road, LeClaire, Iowa 52753 are purchasing this property on contract from Roger R. Bonyne and M. Jean Bonyne. The WWTF serving this mobile home park consists of a package activated sludge wastewater plant and a small concrete polishing unit.

2. Treated wastewater from the WWTF for this mobile home park is discharged to an unnamed tributary to Duck Creek, pursuant to Iowa NPDES Permit No. 6-82-22-6-04. The current NPDES permit for this WWTF expires on August 28, 2010. The permit contains effluent limitations for the discharge of pollutants, including but not limited to carbonaceous biochemical oxygen demand (CBOD5), total suspended solids (TSS), ammonia nitrogen (N) and pH.

3. On January 14, 2005, FO 6 inspected the West Kimberly WWTF. As a result of the inspection, a Notice of Violation (NOV) letter was issued to the facility owner on February 17, 2005 for violations of the CBOD5 and TSS effluent limitations in the facility's NPDES permit.

4. On February 6, 2007, FO 6 inspected the West Kimberly WWTF. Following the inspection, FO 6 sent an NOV letter to the facility owner on February 20, 2007 advising of permit effluent limit violations for 30 day average and 7 day average NH3, failure to monitor and report all parameters as required, and failure to timely submit MORs. The facility owner was advised that the services of a certified operator would need to be obtained if reporting violations continued. In response to the letter from FO 6, the facility owner informed FO 6 that Q.C. Analytical Services, a testing laboratory, would prepare MORs and forward such reports to FO 6.

5. On February 2, 2009, FO 6 conducted an inspection of the West Kimberly WWTF. Following the inspection, FO 6 issued an NOV letter on February 12, 2009 to the facility owners. The FO 6 letter stated that the WWTF exceeded the NPDES permit effluent

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

Kendall L. Miller and Beatrice A. Miller, dba West Kimberly Mobile Home Park

limits for CBOD5 and ammonia nitrogen. The FO 6 letter required the facility owner to hire an engineer to conduct an engineering evaluation to determine why effluent limits were not being met by the WWTF. The FO 6 letter required that the engineering evaluation report be submitted by June 1, 2009.

The inspection report for the February 2, 2009 inspection indicated that the facility had violations of the 30 day average permit effluent limit for CBOD5 during the months of June, August and September 2008. There were 30 day average permit effluent limit violations for ammonia nitrogen for the months of July, August, October and November 2008. The inspection report noted that the facility failed to include on MORs the final effluent temperature, required to be taken once every three months, for the second and third quarters, 2008.

The inspection report for the February 2, 2009 inspection included three requirements for this facility. The facility was required to meet NPDES permit effluent limits, to maintain the WWTF in good working order at all times, and to operate the WWTF as efficiently as possible. The facility owner was required to comply with all monitoring and reporting requirements specified in the NPDES permit for this facility.

6. FO 6 received a letter from the facility owner Ken Miller on February 24, 2009. The letter informed FO 6 that he had hired the services of an engineer to determine why the NPDES permit effluent limits were not met. By a letter dated March 2, 2009, FO 6 advised Mr. Miller that his letter had been received and that the written engineering evaluation report was due by June 1, 2009.

7. By a letter received on May 28, 2009, Ken Miller advised FO 6 that improvements to the WWTF had been made. These improvements included replacement of the 20 year old original rotary displacement blower with a new blower. The main lift station was cleaned out and one of the pumps was replaced with a new pump. The letter also stated that the main aeration chamber had been cleaned.

8. By a letter June 4, 2009, FO 6 notified the facility that FO 6 had received the facility owner's letter concerning the West Kimberly WWTF. The FO 6 letter noted that the facility had stated that certain improvements had been completed. The FO 6 letter required the facility to submit a written engineering report completed by the facility's engineering consultant concerning the effectiveness of the improvements to the WWTF by October 1, 2009.

9. On October 15, 2009, FO 6 issued an NOV letter to Ken Miller concerning the West Kimberly WWTF for failure to submit a preliminary engineering report as required by FO 6. The NOV additionally was issued due to ammonia nitrogen effluent violations in June 2009 and July 2009 at the WWTF.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

Kendall L. Miller and Beatrice A. Miller, dba West Kimberly Mobile Home Park

10. On February 12, 2010, FO 6 received information from Ken Miller. Mr. Miller stated that ammonia nitrogen test results had improved to within permit limits for January and February samples. Mr. Miller stated that facility improvements included a less restrictive input air screen and a new trash screen around the air pumps. Mr. Miller maintained that the extra air into the system lowered the ammonia nitrogen levels in the discharge. He stated that the new air pump, new trash screens, adjusting the floats, cleaning the system, the new screen on the air intake and the new lift station pumps improved the system.

11. On March 26, 2010, FO 6 issued an NOV letter to Ken Miller concerning the West Kimberly WWTF due to an investigation of the discharge of untreated sewage into a road ditch near the facility. FO 6 completed an investigation of a complaint concerning the discharge on March 24, 2010. The environmental specialist found during the investigation that effluent from the West Kimberly WWTF appeared to be discharging to the ground surface rather than to a tile line. The specialist also observed a large amount of gray growth and other solids indicative of inadequately treated wastewater from this discharge in the road ditch. The NOV found that the discharge indicated that the facility was not being properly maintained in violation of Department subrule 567 IAC 64.7(5)"f".

The March 26, 2010 NOV required that Mr. Miller make immediate repairs to the broken line to prevent additional discharges to the road ditch. The NOV required that an engineering evaluation be provided to FO 6 by June 1, 2010. The NOV required the engineering evaluation to include verification that the broken line had been repaired.

12. On April 6, 2010 Ken Miller responded by letter to the FO 6 March 26, 2010 letter. Mr. Miller stated in his letter that there have been no broken pipes or sewage discharge from West Kimberly Park. He stated that the water along West Kimberly Road was from a leak from an Iowa American Water Co. line and that construction work on new culverts in the ditches may have been part of the problem. He also stated that a farmer who leases land next to West Kimberly Park had been installing new tile lines, which might have affected the ditch drainage.

13. On April 20, 2010 FO 6 responded by letter to Mr. Miller's April 6, 2010 letter. The FO 6 letter requested that Mr. Miller investigate the probability that some portion of his WWTF was experiencing a leak. The FO 6 letter stated that inspections and laboratory data concerning the unknown flow near the WWTF led the field office to believe that the flow was wastewater and not a leak from a drinking water pipe or ground water coming to the surface. The FO 6 letter required that the inspection begin immediately and that Mr. Miller consult his engineer for assistance.

14. FO 6 completed an inspection of the West Kimberly WWTF on April 8, 2010. By a letter dated May 18, 2010, FO 6 issued the inspection report for the inspection. The report reviewed MORs for the period of January 2009 through January 2010. The

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

Kendall L. Miller and Beatrice A. Miller, dba West Kimberly Mobile Home Park

inspection report noted 30 day average and 7 day maximum concentration violations for ammonia nitrogen for the months of June 2009, July 2009, September 2009 and October 2009. There were 30 day average and 7 day maximum mass violations for ammonia nitrogen for the months of June 2009, July 2009, and September 2009. There was one 30 day average concentration violation for TSS in December 2009.

Grab samples of the West Kimberly WWTF effluent were collected during the April 8, 2010 inspection. The inspector also collected grab samples of the undocumented flow in the road ditch adjacent to the facility. Sample results for the two sample locations were comparable for the parameters CBOD5, E. coli, pH, and ammonia nitrogen.

The cover letter to the May 18, 2010 inspection report stated that the field office was concerned that the WWTF was not being properly maintained. The cover letter stated that samples collected during the inspection showed that the mixed liquor suspended solids (MLSS) were unusually low. The inspection report noted that the MLSS represent the biomass that removes the pollution from the raw influent. The inspection report noted that such low MLSS levels could indicate a limited ability to adequately treat raw influent. The cover letter stated that Mr. Miller should review his systems operation and maintenance (O & M) manual and request assistance from his engineer, certified operator or other person who has knowledge in system operations to determine what measures can be taken to improve treatment effectiveness.

15. FO 6 sent a letter to this facility's engineer Ed Brinton on June 15, 2010. The FO 6 letter acknowledged receipt of Mr. Brinton's May 26, 2010 letter concerning the compliance status of the West Kimberly WWTF. Mr. Brinton's letter stated that the owner of this facility had made significant improvements to the West Kimberly WWTF during the past year. The FO 6 letter stated that the field office does not "view routine maintenance or replacement/ repair of worn out equipment as 'significant improvements'". A facility is expected to properly operate and maintain a facility in such a way that consistent compliance is achieved."

The June 15, 2010 FO 6 letter addressed Mr. Brinton's assertion that recent laboratory data indicated that the facility was in compliance with CBOD5, TSS and ammonia nitrogen permit limits. The FO 6 letter stated that Mr. Brinton acknowledged that he had not received all MORs. FO 6 stated that field office review of monitoring data indicated that review of MOR data beginning January 2007 to date indicted that the facility had four monthly ammonia nitrogen violations in a six month period in 2008 and again in 2009.

The June 15, 2010 FO 6 letter addressed the discharge to the nearby road ditch that was investigated after a complaint in March 2010. The FO 6 letter stated that Mr. Brinton had adopted the facility owner's position that the water on the ground in the ditch was from a broken water line and not a broken sewage line from West Kimberly, as suggested by FO 6 in its March 26, 2010 letter. The FO 6 letter stated that maintenance crews from Iowa

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

Kendall L. Miller and Beatrice A. Miller, dba West Kimberly Mobile Home Park

American Water Co. visited the site twice and reported that they did not locate a water leak from their lines in the area. The letter also stated that test results for samples collected from the West Kimberly WWTF and the road ditch displayed statistically identical results for E. Coli, CBOD5, and ammonia nitrogen, all of which were elevated.

Mr. Brinton indicated in his May 26, 2010 letter that MMS Consultants, Inc. would not be preparing an engineering evaluation of the existing wastewater treatment facilities at West Kimberly because there is no "practical, reasonable, or economic benefit" for it. The June 15, 2010 FO 6 letter stated that the field office disagreed with this conclusion for the reasons stated in the letter and stated that FO 6 still required that an engineering evaluation be submitted to the Department.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.175(1) provides in part:

If there is substantial evidence that any person has violated or is violating any provision of this division or chapter 459, subchapter III, or of any rule established or permit issued pursuant thereto; then:

1. The director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants to waters of the state contrary to a permit from this Department. Iowa Code section 455B.183 prohibits the operation of a waste disposal system without a permit from this Department.

3. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the construction and operation of WWTFs and the discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60- 69. Subrule 62.1(1) prohibits the discharge of a pollutant without an NPDES permit. Subrule 64.3(1) prohibits the operation of any waste disposal system without a permit. Rule 64.6 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules and monitoring and reporting requirements in chapter 63. The WWTF for West Kimberly discharges to a water of the state and is required to have an NPDES permit with effluent limitations, monitoring requirements and reporting requirements. Although this facility has a current NPDES permit, there have been numerous violations of the permit effluent limitations.

4. Department rule 567 IAC 63.7 provides for the submission of records of operation for WWTFs to the Department. Under this rule MORs are required to be submitted to the Department within fifteen days following the close of the reporting period and in

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

Kendall L. Miller and Beatrice A. Miller, dba West Kimberly Mobile Home Park

accordance with monitoring requirements derived from chapter 63 and included in the operation permit for the facility. Rule 63.9 requires MORs to include the results of all monitoring specified in or authorized by chapter 63. NOV letters issued as a result of inspections and review of monitoring data for the West Kimberly WWTF state violations of the monitoring and reporting requirements for this facility.

5. The NPDES permit for the West Kimberly WWTF requires that this WWTF be adequately operated and maintained. Standard condition 8 of the permit provides that all facilities and control systems shall be operated as efficiently as possible and maintained in good working order. This standard permit condition is based upon subrule 64.7(5)“f”. This subrule states “the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities and systems of control to achieve compliance with the terms and conditions of the permit.” Based on the inspection reports for this facility, there has not been proper operation and maintenance of this facility. The inspection reports establish that an engineering review of the West Kimberly WWTF is necessary in order to determine why this facility is not meeting the effluent limits in its NPDES permit. The March 26, 2010 NOV and the cover letter and report for the April 8, 2010 inspection documented that the WWTF was in need of repair since effluent from this WWTF was discharging to the ground surface in a nearby road ditch.

6. Subrule 64.2(1) requires a facility to obtain a construction permit from the Department prior to construction, installation or modification of a wastewater disposal system. The owners of West Kimberly are required to apply for and receive a construction permit pursuant to 567 IAC chapter 64 of the Department’s rules prior to any upgrade to the wastewater disposal system at this mobile home park.

V. ORDER

THEREFORE, the Department orders Kendall L. Miller and Beatrice A. Miller to comply with the following provisions to cease, abate and redress violations:

1. You are required to submit a complete preliminary engineering report meeting Department requirements for the West Kimberly WWTF by September 30, 2010. The report is required to be prepared by a professional engineer licensed in the state of Iowa, to evaluate WWTF improvement alternatives, and to state the selected alternative to bring this facility into compliance with NPDES permit requirements. The report is required to include an implementation schedule for completion of the upgrade to this WWTF or construction of a new WWTF. You are required to implement the recommendations contained in the preliminary engineering report. The report is required to document that repairs have been made to the broken line leading to a tile line discussed in the March 26, 2010 NOV. Submit the report to the Wastewater Construction Engineering Section, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034 and a copy of the report to FO 6, Iowa Department of Natural Resources, 1023 West Madison, Washington, Iowa 52353-2135.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

Kendall L. Miller and Beatrice A. Miller, dba West Kimberly Mobile Home Park

2. You are required to comply with the effluent limits and the monitoring and reporting requirements of the NPDES permit issued for the West Kimberly WWTF. This includes completion of all monitoring required by the NPDES permit and timely submittal of all MORs to FO 6.

3. An administrative penalty of \$4,000.00 is assessed. The administrative penalty shall be paid to the Department within 30 days of your receipt of this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty. The administrative penalty assessed by this order is determined as follows:

a. Economic Benefit There has been an economic benefit to the owners of this mobile home park due to failure to adequately maintain this facility and in not upgrading this facility as needed. The owners have not paid for repairs to the facility to keep it operating effectively and in compliance with NPDES permit effluent limits. It is estimated that cost savings in not maintaining this facility in full compliance with permit requirements are in excess of \$1,000.00. There also have been cost savings in not monitoring and reporting as required by the NPDES permit. This order assesses the amount of \$1,000.00 for this factor.

b. Gravity of the violations One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above substantial civil and criminal sanctions are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. Failure to maintain the WWTF resulted in effluent limit violations, which could have a negative impact on the receiving stream. There was also an effluent discharge to a nearby road ditch from the WWTF that was initially discovered in March 2010. Based on these considerations, the Department assesses the amount of \$1,000.00 for this factor, due to multiple violations.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

Kendall L. Miller and Beatrice A. Miller, dba West Kimberly Mobile Home Park

c. Culpability This facility failed to timely submit a written engineering report for the evaluation of the WWTF to determine why the facility was not meeting NPDES effluent limits, as required by FO 6 in its February 2009 NOV letter and subsequent letters. In view of the failure to timely repair or upgrade this facility to meet effluent limits, the failure to timely submit the engineering report, the failure to submit MORs with all required information as required by NOV letters and inspection reports, and the continuing discharge to the road ditch, the Department assesses \$2,000.00 for this factor, based on multiple violations.

VI. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1), and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V. constitutes full satisfaction of all requirements pertaining to the specific violations described in this order. Failure to comply with this order may result in referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 7 day of

July, 2010

West Kimberly Mobile Home Park- Wastewater Facility No. 6-82-22-6-04 (Copy to Central Office Wastewater File), Josh Sobaski- Field Office No. 6, Diana Hansen- Legal Services Bureau, US EPA Region VII, I.B.2.a, I.B.2.b, and I.B.2.c.